

Application Number:	2017/0141	Application Type:	Variation of condition
Proposal:	Variation of Condition 3 of Planning Permission 2015/0107 (to extend the Opening Hours)	Location:	Ground Floor Rear of 38-42 Market Street Edenfield
Report of:	Planning Manager	Status:	For Publication
Report to:	Development Control Committee	Date:	21 June 2017
Applicant:	Mr C Davies	Determination Expiry Date:	1 June 2017
Agent:	Mr S Hartley		

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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	Cllr Janice Johnson So that the Committee can consider the amended hours and other suggested conditions.
3 or more objections received	
Other (please state):	

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:-

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

1. RECOMMENDATION

That variation of Condition 3 is refused for the reason set out within Section 9.

2. SITE

The application relates to part of the ground-floor of a two storey end of terrace building situated on the corner of Market Street (B6527) and Elizabeth Street (a short un-adopted street that gives access to the communal passageway running to the rear of the terrace); the application site does not include any external space on Elizabeth Street.

Whilst the ground floor space fronting Market Street is occupied by a solicitors, beauty salon and clinic, the Applicant operates the Drop Off Café (Use Class A3) from the part of the ground-floor to their rear. The café has a floor area of approx. 100sq m and its front entrance to Elizabeth Street.

The rest of the properties in the terrace are in residential use, and are reliant on Market Street for parking. The properties on the opposite site of the main road are also in residential use. Beyond the communal passageway to the rear of the building the land rises by approx. 1m to the rear gardens of houses that front Heycrofts View, the rear garden of No 2 bounded by a 4m high conifer hedge and the back elevation of its garage.

The site is within the Urban Boundary in Edenfield.

3. RELEVANT PLANNING HISTORY

2015/0107 Change of use to Café (Use Class A3)

The application sought Permission for the change of use of this part of the ground-floor to a cafe within Use Class A3 (for the sale of food and drink for consumption on the premises) with opening times of 0900-2100 Monday to Sunday.

The Council's Environmental Health Unit expressed concern that the intended hours of opening would cause noise disturbance to residential neighbours. The Applicant amended the opening hours to: 0900-1900 Monday to Friday; 0900-1700 on Saturday; and 1000-1600 on Sunday.

On this basis the Environmental Health Unit raised no objection. Two residents of houses on Market Street objected to the proposal, concerned principally that they already have difficulty finding space to park their cars near to home and this will become more difficult when the café opens.

With the amended hours of opening LCC Highways advised that the submitted parking surveys demonstrated there to be adequate on-street parking capacity on Market Street to accommodate any vehicles that would be generated by the cafe.

In June 2016 planning permission was granted for the change of use. Condition 3 reads as follows:

The premises shall not be open for customers outside the following hours:
0900-1900 Mondays – Fridays; 0900-1700 Saturdays; and 1000-1600
Sundays and Bank Holidays.

Reason : To ensure the development avoids undue harm to neighbour amenity, in accordance with Policy 24 of the Adopted Core Strategy (2011).

2016/0575 Variation of Condition 3 of Planning Permission 2015/0107 (to extend the Opening Hours)

This application sought to vary the wording of Condition 3 to enable opening of the premises as follows : 0800- 2330 Mondays –Saturdays and 0800-2300 on Sundays.

The Applicant stated on the Application Form that this change was required as *“The business is not viable with the times of opening available to us. Without the extension to the times the business will fail”*.

Notwithstanding that Permission 2015/0107 related to use of the building as a café and not to use of any part of Elizabeth Street as such, the Applicant also advised that to curb any noise for the neighbours they had *“already invested in specialised*

acoustic fabric which will be draped around the entire front entrance and all windows. In addition to this we will strongly forbid any drinking/sitting outside the cafe late at night & we will manage this with door persons if necessary”.

Nine representations were received from neighbours/customers : 6 of support and 3 of objection.

Those in support stated :

- The Drop Off Cafe is a very welcome addition to the village - to have a night-time alternative to pubs would be welcome.
- It is a vibrant business that has without doubt added to the village. Any business looking to invest in a small rural community should be backed by the local authority - it could provide jobs.
- As a keen cyclist I would often bypass Edenfield as there was no reason for me to stop, since the café opened myself and a number of friends now often frequent the café and it would be great to be able to visit in the evening also.

Those in objection included the resident of 2 Heycrofts View :

- I had no objection to a café based on the original application site and hours as approved - there was no mention in the application to use of outdoor space for eating. Over the past 12 months our quality of life has been significantly reduced by the café, in terms of loss of privacy, noise and car parking.
- Our rear garden is so close to the café that when we sit outside in summer we can see/hear customers and their children playing/dogs barking, and assume they can hear/see us. The land extending north of Elizabeth Street is also part of our garden and we enjoyed gardening it at the weekend but now find this uncomfortable as we are watched by diners.
- Although many customers do visit on bikes or walk, there are many more that visit by car. Heycrofts View is the parking place of choice for customers during the working day and at weekends, many parking on the footpath, restricting access for pedestrians and diminishing the safety of children of the family-houses in Heycrofts View to play in the street. This will become significantly worse if the café is allowed to open in the evening.

Other objectors referred to :

- The previous application being approved with conditions that the café operate on a restricted hours basis to reduce the impact on neighbours. Bearing in mind the right of the neighbourhood to get some peace opening to 9pm is acceptable.
- Unfortunately, the parking situation has worsened significantly since the original permission was granted. My wife and I regularly find ourselves blocked into our drive and visibility when manoeuvring out of the drive is also difficult due to parking of customers cars and vans arriving with bikes in the back.

Whilst LCC Highways did not object, the Council's Environmental Health Unit recommended refusal of the application.

The Environmental Health Unit advised that it did not have objection to an extension to the permitted opening times to enable the Café to open until 7pm on any day of the week.

The Applicant made it clear that they wished the application to be determined on the basis of opening being allowed to 11.30pm Monday to Saturday and to 11pm on Sunday, and with no restriction on the evenings they are open to the general public (rather than to pre-booked groups).

Accordingly, the Environmental Health Unit continued to recommend refusal of the proposed variation to opening hours, notwithstanding what the Applicant has said about use of specialised acoustic fabric to drape around the front entrance and windows and willingness to forbid drinking/sitting outside the cafe late at night. Due to the location of residents' properties it was of the view that the only effective means of preventing noise nuisance is to restrict the opening hours, especially as during the summer months sitting outside would be appealing and the nearby residents would also wish to make use of their gardens and have bedroom windows open.

After consideration of the application at the meeting of Committee on 28 February 2017 it was refused for the following reason :

The proposed extension to the opening hours of the café (Use Class A3) will detract to an unacceptable extent from the amenities residential neighbours currently enjoy or could expect to enjoy by reason most particularly of noise and disturbance from the premises late into the evening, contrary to Core Principles of the National Planning Policy Framework and Policies 1 and 24 of the Council's adopted Core Strategy (2011).

4. PROPOSAL

The current application seeks to vary Condition 3 of Planning Permission 2015/0107 to read as follows :

- a) New customers will not be permitted access to the premises after 22:30 hours on Mondays to Saturdays included and after 22:00 hours on Sundays. Consequently the premises shall not be open to customers after 23:00 hours on Mondays to Saturdays included and after 22:30 hours on Sundays and Bank holidays.
Reason: to preserve residential amenities from potential general disturbance from potential noise
- b) Specialised acoustic fabric which will be draped around the entire front entrance and all windows and kept in place as long as the premises are open.
Reason: to preserve residential amenities from general disturbance from potential noise
- c) No "take-away" facility shall be offered from the premises.
Reason: to control the number of persons arriving by car and to preserve residential amenities from general disturbance
- d) The use of the premises shall be restricted to Use class Order A3 of the General Permitted Development Order (as amended).
Reason: for the avoidance of doubt
- e) Permission for the extended hours shall be granted for a 12 month period only unless a further approval relating to extended hours is granted by the LPA.
Reason: so that the impact on residential amenities in the form of noise and general disturbance can be assessed in the light of the above conditions.

The Planning Statement accompanying the application states :

“The proposal to extend the opening hours of the cafe is now on a more restricted basis than for the earlier application. Moreover, it is accompanied with proposed other conditions which will prevent any possible, unacceptable adverse impact on residential amenities by way of noise and general disturbance.

In addition the proposed condition of an approval for a limited period (12 months) will allow the Council to keep control of the situation and will allow time for the operation of the cafe to be assessed under the suggested conditions.”

The Applicant has also submitted a petition of support bearing 105 signatures, together with copies of a dozen and a half other letters/emails of support.

As the red-edged site of Application 2015/0107 did not include the outside space on Elizabeth Street the permission then granted for the café did not relate to it. Accordingly, the current application to vary Condition 3 of that permission cannot permit the use of this area for café purposes. The Applicant has been advised its use would require submission and approval of a separate application for planning permission.

5. POLICY CONTEXT

National

National Planning Policy Framework

- Section 1 Building a Strong Competitive Economy
- Section 2 Ensuring the vitality of town centres
- Section 4 Promoting sustainable transport
- Section 8 Promoting healthy communities

Development Plan

RBC Core Strategy (2011)

- AVP 5 Area Vision for South West Rossendale
- Policy 1 General Development Locations & Principles
- Policy 8 Transport
- Policy 11 Retail and other town centre uses
- Policy 13 Protecting Key Local Retail and other Services
- Policy 23 Promoting High Quality Designed Spaces
- Policy 24 Planning Application Requirements

6. CONSULTATION RESPONSES

RBC Environmental Health

Objection

LCC Highways

No objection

7. REPRESENTATIONS

To accord with the General Development Procedure Order a site notice was posted and neighbours were notified by letter.

A total of 61 representations have been received, of which 3 express objection to the proposal and the rest are in support.

Those in support include Edenfield Village Residents Association and have stated :

- The cafe is a very welcome addition to the village - to have a night-time alternative to pubs would be welcome. Edenfield has recently lost its post office, a pub, conservative club and Italian restaurant. We support efforts to make the cafe business viable.
- It is a vibrant business that has without doubt added to the village. The building has been tastefully renovated and any business looking to invest in a small rural community should be backed by the local authority - it could provide jobs.
- The owners have organised lots of events attracting cyclists and walkers to the village - which can only be good news for the local economy - and it has become a really good meeting point for the local community.
- The Cafe is not in a quiet, private area. It is on a busy public road, which is a busy bus route. It is not the kind of place to attract either noise or undesirable clientele.
- Although it may be near residential properties so too are the two public houses in the village as are several other cafes/restaurants throughout the borough.

Those in objection included the resident of 2 Heycrofts View :

- The application is very similar to the previous application (2016/0575) in that the hours applied for are only 30 minutes different from the earlier application, this is far outside what the Environmental Health Unit recommended.
- The principal concern of the Committee was the noise generated from the premises particularly in the outside area on Elizabeth Street which is adjacent to my premises, late at night. The Committee expressed its view that people are likely to be noisy when they leave and on top of that there will also be noise from staff leaving. On the basis of this application, it is likely that customers will leave after 2300 and staff sometime after that. This is unacceptable when so close to a residential development.
- The applicant suggests the hours extension for a trial period - he has already had a trial period by operating beyond the hours of the current planning approval and the noise was unacceptable.
- It is acceptable for my children to suffer a disturbed night's sleep. They also do their homework in their bedrooms which directly face the premises and is only around 10-12 metres away.
- The parking situation is bad enough during the daytime, particularly at weekends, despite the applicant's claim that most people will arrive by bike or on foot. It is unlikely that in the evenings people will travel by bike or foot so the parking situation will worsen. Inappropriate parking is increasing the risk of a traffic accident.

Another objector resides in a house on the opposite side of Market Street and refers to :

- Parking already being a problem in the vicinity of the café, on-street parking obstructing their drive and limiting visibility/the ability to safely manoeuvre when exiting their drive to the main road, notwithstanding the Applicant encouraging his staff and the tenants of the other businesses in the building to park their vehicles on the car park of the former Horse & Jockey pub (an option that they cannot expect to continue to be available).

The final objection states simply :

- No opening beyond 9pm should be allowed.

8. ASSESSMENT

The main consideration of this application is Neighbour Amenity.

The current application seeks to vary Condition 3 of Planning Permission 2015/0107 in terms of :

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- a) opening hours
- b) use of specialised acoustic fabric draped around the door & window openings
- c) having no “take-away” facility
- d) restricting use of the premises to Use class Order A3
- e) permitting the extended hours for a 12 month trial period

Paragraph 203 of the National Planning Policy Framework (NPPF) states “*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions*”. Paragraph 206 of the NPPF states “*Planning conditions should only be imposed where they are:*

1. *necessary;*
2. *relevant to planning and;*
3. *to the development to be permitted;*
4. *enforceable;*
5. *precise and;*
6. *reasonable in all other respects.*”

The Government Guidance on the use of planning conditions issued by the Department of Communities & Local Government on 6 March 2014 states :

“Any proposed condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis.”

It goes on to advise that :

“Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only. A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity.

Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.”

In respect of Application 2016/0575 the Environmental Health Unit objected to the extension of opening hours it proposed due to the potential to be detrimental to the community and cause noise nuisance due the proximity of the noise sensitivity properties. However, it did indicate that it would not have objection to an extension to the opening times on Saturday and Sunday, thereby enabling the café to remain open to the public staying until 7pm on any day of the week.

As a result of receipt of these comments, and those of local residents objecting to the proposal, the Applicant was asked to consider ways in which they could minimise the likelihood of noise disturbance for neighbours, including consideration of :

- the lateness of the hours at which they would close on different days of the week
- the evenings on which they might open to pre-booked groups rather than be open to the general public
- the means by which they might limit the public use of outside areas

The Applicant made it clear that they wished the application to be determined on the basis of opening being allowed to 11.30pm Monday to Saturday and to 11pm on Sunday, and with no restriction on the evenings they are open to the general public (rather than pre-booked groups).

Accordingly, the Environmental Health Unit (EH) continued to recommend refusal of the earlier application, notwithstanding what the Applicant had said about use of specialised acoustic fabric to drape around the front entrance and windows and willingness to forbid drinking/sitting outside the cafe late at night. Due to the location of residents' properties it considered that the only effective means of preventing noise nuisance was to restrict the opening hours, especially as during the summer months sitting outside would be appealing and the nearby residents would also wish to make use of their gardens and have bedroom windows open.

Notwithstanding that approval of Application 2016/0575 could not permit Elizabeth Street to be used for café purposes as Permission 2015/0017 had not permitted its use, EH further advised that if the use of the outside space could be effectively restricted then EH would request a noise impact assessment be carried out to determine if complaints are likely whilst operating the café area within the building during the proposed hours assuming doors and windows were kept closed. This would take into account need for mitigation measures such as acoustic curtains as then being suggested by the Applicant. The closing of windows and doors creates further problems in itself due to lack of ventilation for customers and staff. It was the view of EH that effective noise screening of the outside space would not be an option.

With respect to the current application EH recommend refusal to the extension of hours for which approval is now sought, stating :

“EH maintain their comments made on the original planning application reference 2016/0575 to vary the opening hours of the cafe.

The proposed extension to the opening hours have the potential to be detrimental to the community and cause noise nuisance due the proximity of the noise sensitivity properties.

EH have considered the proposals by the applicant and still maintain the only effective means of preventing loss of amenity to nearby residents is to restrict the opening hours.”

The hours of opening now proposed for the café are little different to those of Application 2016/0575 - to be to 11pm Monday to Saturday (rather than 11.30pm) and 10.30pm on Sunday (rather than 11pm).

The use of specialised acoustic fabric draped around the door & window openings was considered in respect of Application 2016/0575.

Having no “take-away” facility will not have a bearing on the hours at which customers go to and from the premises.

Restricting use of the premises to A3 Food & Drink use will preclude a change of use to an A1 Shop or A2 Financial & Professional Service use without submission and approval of an application for planning permission. This would not address the concern about the likelihood of noise and disturbance arising from the hours at which customers go to and from the premises.

With respect to the suggested condition giving an approval for a period limited to 12 months to “...allow time for the operation of the cafe to be assessed under the suggested conditions”, such a condition may have been appropriate if the café had not come into operation and there was concern that its opening may give rise to unacceptable detriment for neighbours. However, in this instance the café has been in operation and has opened beyond the hours permitted by Permission 2015/0017, resulting in complaint. Furthermore, the café has made use of Elizabeth Street without the benefit of permission and the Applicant has not undertaken to desist from doing so or applied for permission to do so. Accordingly, the suggested conditions will not be on trial.

Furthermore, the enforceability of a condition to prohibit external eating/drinking on Elizabeth Street is questionable and would not in any case enable this area to be closed-off entirely and would still be subject to people coming and going into the premises into the late evening.

LCC Highways considers that there will be capacity for the vehicles of customers to park on-street during the evenings without obstruction of highways or endangerment of other road users. Accordingly, it has not recommended refusal of the application.

However, it is the case that during the day visitors to the café do park their vehicles in Heycrofts View - on occasion half on the footway/half on the carriageway - and there is no reason that parking on this residential street will not occur in the evenings (even if there is spare capacity for them to park on the main road).

The proposal is considered likely to detract to an unacceptable extent from the amenities residential neighbours currently enjoy or could expect to enjoy by reason most particularly of noise and disturbance when customers are outside the building and moving between it and their cars in the late evening.

9. RECOMMENDATION

Refusal

Reason for Refusal

The proposed extension to the opening hours of the café (Use Class A3) will detract to an unacceptable extent from the amenities residential neighbours currently enjoy or could expect to enjoy by reason most particularly of noise and disturbance from the premises late into the evening, contrary to Core Principles of the National Planning Policy Framework and Policies 1 and 24 of the Council's adopted Core Strategy (2011).



BY: [blank]
DATE: [blank]

PROJECT: [blank]

TITLE: Location Plan

DRAWN BY: [blank]

SCALE: 1:500 at A3
DRAWN BY: [blank]



LOCATION PLAN

REAR OF 42 MARKET ST, EDENFIELD.